IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WP(C).No. 9635 of 2007(V)

CC.52/2005 of J.M.F.C.-II, CHERTHALA

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PETITIONER:

UDAYAKUMAR, KALAPPURACKAL VEEDU,
C.M.C.14, CHERTHALA.

BY ADV. SRI.JOBY CYRIAC

RESPONDENTS:

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1. STATE OF KERALA, REPRSENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. SOMASEKHARAN NAIR, THAIKKANTATHIL
HOUSE (KEERTHANAM), EZHUPUNNA P.O.,
CHERTHALA.

R2 BY ADV. SRI.ANTONY MATHEW
SRI.GEEN T.MATHEW
R1 BY GOVT. PLEADER SRI. S.U. NAZAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF COMPLAINT IN C.C.NO.57 OF 2005 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, CHERTHALA.

EXT.P2 TRUE COPY OF CMP5948 OF 2006 IN C.C. 57 OF 2005.

EXT.P3 TRUE COPY OF THE IMPUGNED ORDER DT. 11.12.06 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, CHERTHALA.

/TRUE COPY/

R. BASANT, J.

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W.P.C.No. 9635 of 2007 V

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Dated this the 24th day of May, 2007

JUDGMENT

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. The petitioner has a case that he did not have any transaction with the complainant as alleged and the complainant is making use of a cheque issued for other purposes. The petitioner claimed exemption from personal appearance. That was allowed. There was also a request that in his attempt to bring out the truth - that the complainant does not know the accused - the accused may be permitted to put questions to the complainant with the help of photographs to bring out that the complainant does not know the accused at all. That part of the prayer was rejected by the learned Magistrate. The petitioner has come to this court aggrieved by that part of the order.

2. Notice was given. The complainant has entered appearance through counsel. No serious objection is raised. I am unable to find anything that is impermissible or illegal in the request made. Any course which helps to ascertain the truth and advance the interests of

justice and which is not specifically prohibited by law can and must be permitted by courts in the course of trial to achieve the final destination of all trial i.e. the ascertainment of truth and justice. In that view of the matter, I am satisfied that if proper procedures are adopted such a course can be permitted by the learned Magistrate. The possibility of an unreal or old photographs of accused being shown to the complainant if eliminated, I have no reason to assume that such course will not cater to the ends of justice.

3. This Writ Petition is accordingly allowed. The impugned order in so far as it does not permit cross examination of PW1 using the photographs of th accused and others is set aside.

4. Issue copy today itself.

(R. BASANT)
Judge

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